



# FOOD DONATION NIGERIA **RECOMMENDATIONS** FOOD DONATION LAW AND POLICY

SEPTEMBER 2022

## Authors

This report was written by Esther Akwii, Molly Cohen, Emily M. Broad Leib, Tori Oto, Ali Nayfeh, and Velo van Houden at the Harvard Law School Food Law and Policy Clinic with contributions from Douglas O'Brien at The Global FoodBanking Network.

## Acknowledgments

We are grateful to The Global FoodBanking Network (GFN) whose input, ideas, and expertise informed much of our research. This report was also made possible by the advice and support of our on-site partners in Nigeria, with whom we discussed the ideas provided here, including Lagos Food Bank Initiative, and many other NGOs, businesses, and government agencies.

## About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org).

## About the Harvard Law School Food Law and Policy Clinic

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit [www.chlpi.org/food-law-and-policy](http://www.chlpi.org/food-law-and-policy).



## About The Global FoodBanking Network

The Global FoodBanking Network (GFN) supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit [www.foodbanking.org](http://www.foodbanking.org).



## Made possible with support from the Walmart Foundation

The research included in this report was made possible through funding by the Walmart Foundation. The findings, conclusions, and recommendations presented in this report are those of the Harvard Law School Food Law and Policy Clinic alone and do not necessarily reflect the opinions of the Walmart Foundation.



Report design by Najeema Holas-Huggins.

# TABLE OF CONTENTS

**About These Recommendations.....1**

**Summary of Recommendations.....2**

**Introduction.....3**

**Legal Challenges & Policy Recommendations.....3**

    Food Safety for Donations.....3

        Issue Overview.....3

        Recommended Policy Actions.....4

    Date Labeling.....6

        Issue Overview.....6

        Recommended Policy Actions.....7

    Liability Protection for Food Donations.....7

        Issue Overview.....7

        Recommended Policy Actions.....8

    Taxes.....9

        Issue Overview.....9

        Recommended Policy Actions.....9

**Conclusion.....9**

# ABOUT THESE RECOMMENDATIONS

This document is a product of The Global Food Donation Policy Atlas project, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). The Atlas project is an innovative partnership that maps the laws and policies affecting food donation in countries across the globe and provides a comparative legal analysis based on these findings. For each country, the Atlas project produces a Legal Guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the Legal Guides recognize universal issues that impact efforts to reduce food loss and waste (FLW) and increase food recovery. These issues include food safety, date labeling, liability, taxes, donation requirements and food waste penalties, and government grants or funding programs.

In-country interviews with relevant stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the Legal Guides and revealed priority actions for law and policy change. Based on these findings, FLPC has developed specific recommendations for each country. These recommendations serve as a companion to the Legal Guides, though both documents may stand alone. The purpose of the recommendations is to highlight select actions for improving laws, policies, and programs relevant to food loss, waste, and donation.

This document sets forth recommendations focused on Nigeria, where nearly 116 million people are moderately or severely food insecure,<sup>1</sup> while approximately 40% of food produced is lost after harvest.<sup>2</sup> It provides an overview of the legal issues most pertinent to food donation, which the Nigerian Legal Guide explains in further detail. The recommendations included in this report are not exhaustive but offer select best practices, policy solutions, and legal frameworks for combatting food insecurity and reducing FLW in Nigeria.



# SUMMARY OF RECOMMENDATIONS

The following recommendations provide a starting point for Nigerian stakeholders to strengthen food donation policies and legal frameworks. Policymakers, donors, food banks, and other organizations dedicated to increasing food donation and reducing food waste (collectively referred to as “food recovery organizations”) should continue working together to consider additional opportunities for advancing food donation and reducing food waste.

**To ensure that food is donated safely without posing risks to recipients, the federal government should:**

- Amend the National Agency for Food and Drug Administration and Control Act (NAFDAC Act) to feature a donation-specific chapter.
- Publish draft regulations related to the NAFDAC Act that elaborate on food safety for donations.
- Produce and disseminate clarifying guidance on food safety requirements relevant to donation.

**To ensure that quality-based date labels do not cause food that is safe for consumption and donation to be discarded, the federal government should:**

- Amend the Pre-packaged Food, Water and Ice Labelling Regulations to explicitly permit food donation after the quality-based date.
- Promote education and awareness on the meaning of date labels.

**To ensure that liability concerns do not deter potential food donors, the federal government should:**

- Enact national legislation that establishes clear and comprehensive liability protection for food donors and food recovery organizations.

**To ensure that tax incentives encourage businesses to engage in food donation, the federal government should:**

- Amend the Companies Income Tax Act (CITA) to explicitly include food recovery organizations as eligible recipients under the fifth schedule.
- Amend the Companies Income Tax Act (CITA) to allow in-kind donations, including donations of food.
- Provide a tax deduction for activities associated with the storage, transportation, and delivery of donated food.

**To ensure that food donors and food recovery organizations are sufficiently incentivized to donate food, the federal and state government should:**

- Create government grant opportunities for food donation infrastructure.



# INTRODUCTION

Nigeria is Africa's largest economy, with a gross domestic product (GDP) of 182.8 trillion Nigerian narias (NGN), or US\$440 billion.<sup>3</sup> Despite the country's large GDP, 39% of Nigerians lived below the national poverty line in 2019.<sup>4</sup> At the same time, nearly 116 million people were moderately or severely food insecure between 2018 and 2020.<sup>5</sup> The Nigerian government has taken steps to promote food security. The Constitution of the Federal Republic of Nigeria directs states to ensure that all Nigerians always have adequate food.<sup>6</sup> In 2016 it published its National Policy on Food and Nutrition in Nigeria to promote food security for all Nigerians.<sup>7</sup> In 2017 Nigeria adopted the Agriculture Sector Food Security and Nutrition Strategy to tap its rich agricultural potential to reduce poverty and end hunger by 2035.<sup>8</sup>

Despite significant hunger and the government's focus on food security, Nigeria wastes nearly 38 million tons of household food each year.<sup>9</sup> Around 40% of all food produced is lost or wasted.<sup>10</sup> High rates of food waste indicate that Nigeria, like much of the world, is falling behind its commitment to cut food waste in half by 2030 under the United Nations' Sustainable Development Goal 12.3.<sup>11</sup> Nigeria updated the National Policy on Solid Waste Management in 2020, identifying cafes, restaurants, hotels, food stalls, agriculture, and food-processing facilities as major sources of solid waste.<sup>12</sup> The policy urges the public to use organic waste to produce compost, but it does not identify or establish a path to reduce food waste.<sup>13</sup> Several nonprofit and private-sector initiatives address FLW in Nigeria including the Postharvest Loss Alliance for Nutrition (PLAN) led by the Global Alliance for Improved Nutrition (GAIN), which addresses the loss and waste of nutrient-dense perishable foods.<sup>14</sup>

As Nigeria seeks to reduce FLW and mitigate food insecurity, various stakeholders, including the private sector and nonprofit organizations, must recognize and understand the laws that apply to food donation. The following sections briefly summarize some of the most common legal issues relevant to food donation (as the Nigeria Legal Guide identifies and describes in more detail) and offer policy recommendations to address these challenges.

## LEGAL CHALLENGES & POLICY RECOMMENDATIONS

### Food Safety for Donations

#### Issue Overview

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to food offered for sale, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could be redirected to populations in need is instead destined for landfills. Food safety laws in Nigeria are mostly contained in the National Agency for Food and Drug Administration and Control Act (NAFDAC Act), the Food and Drugs Act (FDA), and the Counterfeit and Fake Drugs and Unwholesome Processed Foods Act.

The NAFDAC Act established the National Agency for Food and Drug Administration and Control (NAFDAC) to regulate and control the sale and distribution of food as well as ensure food safety in Nigeria.<sup>15</sup> In 2019 NAFDAC published the Guidelines for Food Hygienic Practices (NGFHP) to provide guidance on food hygiene and safety requirements in the food industry.<sup>16</sup> Even though the guidelines do not explicitly reference food donation, they apply to NGOs that handle food and therefore most likely apply to food banks that receive, process, and distribute food.

In addition, the FDA prohibits any person from selling, importing, manufacturing, or storing food that contains “any poisonous or harmful substance; is unfit for human consumption; or consists in whole or in part of any filthy, disgusting, rotten or diseased substance.”<sup>17</sup> While the FDA does not explicitly reference food donation, given food recovery organizations often store and distribute food, a broad interpretation of the Act suggests that it would apply to facilities that handle, store, and distribute donated food.

The Counterfeit and Fake Drugs and Unwholesome Processed Foods Act prohibits the manufacture, sale, and distribution of adulterated or unwholesome processed foods.<sup>18</sup> While the Act does not explicitly reference food donation, it covers both storage and distribution of food. This suggests it would apply to facilities that handle and distribute donated food.

The relevant legislation and regulations do not specifically mention food donation or explicitly reference food safety standards as it pertains to donated food. As a result, food donors should presume they must comply with all the food safety provisions.

## Recommended Policy Actions

### **1. AMEND THE NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL ACT (NAFDAC ACT) TO FEATURE A DONATION-SPECIFIC CHAPTER.**

To eliminate uncertainty, regarding which provisions apply to the safety of donated food, Nigeria should amend the NAFDAC Act to feature a donation-specific chapter that clarifies which provisions are necessary to ensure the safety of donated food and which are not, such as those that relate to the ability to market something for sale but do not contribute to safety. For example, the donation-specific section could cover whether food can be donated if a labeling flaw prevents it from being sold but does not impact its safety. Creating a donation-specific section in the law would significantly ease the burden on food donors and food recovery organizations seeking to comply with relevant food safety provisions and may increase food donation.

### **2. PUBLISH DRAFT REGULATIONS RELATED TO THE NAFDAC ACT THAT ELABORATE ON FOOD SAFETY FOR DONATIONS.**

Nigeria’s Federal Ministry of Health (MOH) should draft regulations related to the NAFDAC Act that elaborate on food safety for donations. Under the NAFDAC Act, the NAFDAC Governing Council with the approval of the Minister of Health has powers to make regulations to ensure full implementation of the provisions of the Act.<sup>19</sup> Regulations that contain clear and distinct food safety requirements applicable to donated food can enable food donors and food recovery organizations to meet established food safety standards and encourage food donation. For example, India published Surplus Food Regulations, which set standards relevant to leftover food that may be donated.<sup>20</sup>

### **3. PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE ON FOOD SAFETY REQUIREMENTS RELEVANT TO DONATION.**

Differentiating which food safety regulations apply specifically to donated food can be confusing and burdensome for food donors and other stakeholders. Clear guidance from the federal Ministry of Health on what provisions under the NAFDAC Act, the FDA, the Counterfeit and Fake Drugs and Unwholesome Processed Foods Act, or other requirements apply to donated food would ease concerns of food donors and food recovery organizations and likely lead to increased and safer food donation. For example, in the United Kingdom, the Waste and Resources Action Programme (WRAP), the Food Standards Agency, and the Department for Environment, Food and Rural Affairs (Defra) have published donation and redistribution guidance.<sup>21</sup> Singapore’s National Environment Agency also issued Guidelines on Food Donation in 2016. The guidelines state that they are

intended to assist actors in complying with food regulations and outline the responsibilities of donors and food recovery organizations.<sup>22</sup> Guidance can generally be more informal and detailed than legislation, which often makes it more useful to a broader audience. Donors would have the NAFDAC Act, the FDA, the Counterfeit and Fake Drugs and Unwholesome Processed Foods Act, and prevailing guidance to help them understand their food safety obligations with respect to donated food.

## Date Labeling

### Issue Overview

Misconceptions about food date labels---like such as “sell by,” “use by,” or “best by”---are major contributors to food waste. Many donors and consumers interpret these date labels as indicators of food safety. Yet, for the vast majority of foods, date labels indicate freshness or quality rather than food safety, and few foods become more likely to carry foodborne illnesses over time. Cautious donors and food recovery organizations, however, may discard food once the date passes even if the food is perfectly safe to donate and consume.

Nigeria’s date labeling scheme is set out in the Pre-Packaged Food, Water and Ice Labelling Regulations (2019)<sup>23</sup> (hereinafter the Labeling Regulations) under the NAFDAC Act.<sup>24</sup> The Labeling Regulations apply to all prepackaged food products, including water and ice.<sup>25</sup> They require all “pre-packaged food to specify and display the day, month and year of manufacture on the label.”<sup>26</sup> Additionally, they establish a dual date labeling scheme for prepackaged food that distinguishes between safety-based and quality-based labels.<sup>27</sup> The Labeling Regulations require all pre-packaged food products to feature a “use-by date” or “expiration date” or a “best-before-date” or “best-before-quality-date,” depending on the type of the food product.<sup>28</sup> The Labeling Regulations require a “use-by date” or “expiration date” on all products that “must be consumed before a certain date to ensure its safety and quality.”<sup>29</sup> Prepackaged food past the “use-by date” regardless of quality should not be regarded as marketable.<sup>30</sup> For any other prepackaged food products that do not require a safety-based label, the Labeling Regulations require a “best-before date” or “best quality before date.”<sup>31</sup> The Labeling Regulations list several types of foods that are exempt from this requirement, to indicate a “best-before-date,” including fresh fruits and vegetables, tubers, alcoholic beverages, pastries, vinegar, non-iodized food, and nonfortified solid sugar.<sup>32</sup>

Furthermore, the Labeling Regulations prohibit the distribution of food “whose expiry date has lapsed,”<sup>33</sup> meaning food past the “use-by date.” However, they state that food past the “best-before date” may be “still be acceptable for consumption,”<sup>34</sup> though the regulations do not explicitly permit their distribution. Since the Labeling Regulations apply to all prepackaged food, the labeling requirements presumably apply to prepackaged food that is donated free of charge, though it is unclear whether the restriction on distributing past-date food applies to donated food.

Despite the clear distinction between quality and safety labels, the Labeling Regulations do not explicitly state whether food can be donated past the quality-based date, which may create a barrier to the donation of wholesome, edible food. In addition, there is currently no guidance on how the Labeling Regulations apply to donated food or other guidance clarifying whether food past the quality date can be donated.

### Recommended Policy Actions

#### **1. AMEND THE PRE-PACKAGED FOOD, WATER AND ICE LABELLING REGULATIONS TO EXPLICITLY PERMIT FOOD DONATION AFTER THE QUALITY BASED-DATE.**

Nigeria should amend the Labeling Regulations<sup>35</sup> to explicitly permit food donation after the quality-based date, also referred to as the “best-before” date. Without clear, persuasive language in the Labeling Regulations,



cautious food donors and food recovery organizations may assume date labels indicate food safety concerns and err on the side of caution, not donating food after the affixed date passes. This legal change can be further strengthened by providing technical support to retailers, manufacturers, and other potential donors to explain the change to them.

## 2. PROMOTE EDUCATION AND AWARENESS ON THE MEANING OF DATE LABELS.

Nigeria should also promote business and consumer education and awareness on the meaning of date labels. Potential food donors often erroneously perceive “best before” dates and any other dates included on food products to indicate safety. As such, increasing the sale, consumption, or donation of food after these dates will require a change in behavior. National education is critical to inform donors, food recovery organizations, and consumers that these dates are not regulated to convey safety but are more likely indicators of quality. Joint public- and private-sector initiatives may help to ensure that stakeholders understand that date labels should not stand as barriers to donation. For example, in the United Kingdom, Waste and Resources Action Programme (WRAP) has partnered with government agencies to publish updated guidance on the meaning of United Kingdom date labels and issued additional guidance on the ability to donate food past its quality date food.<sup>36</sup> In addition, the United Kingdom has adopted several consumer awareness campaigns to educate on the difference between quality-based and safety-based date labels, including the “Love Food Hate Waste”<sup>37</sup> and “Look, Smell, Taste, Don’t Waste” campaigns.<sup>38</sup>

## Liability Protections for Food Donation

### Issue Overview

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. This fear is particularly heightened when the applicable law provides for “strict liability” (i.e., a donor or food recovery organization that did not act maliciously or intend to inflict harm may still be held legally and financially responsible for any resulting damage). Other countries, including Argentina and the United States, have “Good Samaritan” protections for food donors and food recovery organizations so these actors will not be held legally or financially responsible for resulting harm, provided they acted in good faith and in accordance with relevant laws.<sup>39</sup>

The primary law regulating consumer protection and liability in Nigeria is the Federal Competition and Consumer Protection Act (FCCPA).<sup>40</sup> Of relevance to food donation, the FCCPA establishes the right to safe and good-quality goods for consumers as well as creates a right of action for consumers related to claims of harm arising from goods.<sup>41</sup>

The FCCPA promotes the rights and safety of consumers and governs liability with respect to defective or unsafe goods.<sup>42</sup> It holds any *undertaking*, defined as any person involved in the production or trade of goods, liable for any damages resulting from the supply of defective goods or service.<sup>43</sup> The FCCPA defines “trade” as any business “relating to the supply” of goods<sup>44</sup> and defines “supply” to include supply by gift,<sup>45</sup> meaning food donors and food recovery organizations would likely be considered “involved in the production or trade of goods” under the FCCPA. Given that “supply” covers gifts, donation of defective food (“goods or service”) that results in damage such as personal injury could result in liability for food donors or food recovery organizations.

When applied, the FCCPA establishes a strict liability scheme. It holds persons who supply a defective service or good, such as food, liable for any damages resulting from the supply, whether or not a consumer bought the good or service from the person supplying the goods or service.<sup>46</sup> The FCCPA does not provide any defenses for damages or injury resulting from the supply of defective goods or services,<sup>47</sup> and it states that persons involved in the production or trade of goods or services shall not be shielded from liability.<sup>48</sup> Moreover, if a consumer

alleges injury or damages resulting from the supply of goods or services, the burden is on the supplier to prove that the goods or services were not defective.<sup>49</sup> In the food donation context, this means food donors and food recovery organizations would be subject to strict liability for any injury or damages stemming from donating or distributing defective food, and the burden of proof to show the food was not defective would fall on the food donors and food recovery organizations.

Food donors and food recovery organizations should ensure that donated food complies with applicable laws, including those discussed in the Nigeria Legal Guide, to reduce liability risks.

## Recommended Policy Actions

1.

### ENACT NATIONAL LEGISLATION THAT ESTABLISHES CLEAR AND COMPREHENSIVE LIABILITY PROTECTION FOR FOOD DONORS AND FOOD RECOVERY ORGANIZATIONS.

Nigeria should enact new legislation that creates robust liability protections for food donors and food recovery organizations so these actors will not be held legally or financially responsible for resulting harm from donated food. For example, the Food Donation Law in Argentina protects both food donors that offer food for free to populations in need and food recovery organizations that distribute food to those in need. Liability protection under the Food Donation Law only extends to food donors and intermediaries that comply with necessary food safety, labeling, and other relevant requirements.<sup>50</sup> Argentina also affords donors and food recovery organizations a presumption of good faith absent any willful misconduct or negligence resulting in harm to a beneficiary.<sup>51</sup>

Nigeria should adopt similar protections for food donors with a broad and clear grant of protection. This protection should not be absolute. The law could maintain that food donors are not shielded from protection if they demonstrate gross negligence or willful misconduct when handling the donated food prior to distribution. The expanded protections should also cover food recovery organizations that comply with the same requirements imposed on food donors.

## Tax Incentives and Barriers

### Issue Overview

Food donation helps mitigate the costs of hunger and stimulate the economy. Food banks and intermediaries provide jobs or sponsor community development, while recipients of donated food can spend limited financial resources on other basic goods and services. However, food donation can also be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax laws can either help offset these expenses and incentivize donation, or they can create an additional barrier, contributing to greater FLW. Corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction or credit to offset the cost of transportation and logistics.

Under Nigeria's Companies Income Tax Act (CITA), companies can deduct allowable donations made to eligible recipients in the relevant assessment period under certain conditions, but the limited nature of this deduction makes it inapplicable to donations made to food recovery organizations.<sup>52</sup> Specifically, donations must be made to eligible recipients, including any public fund established or approved by the federal or state government, as well as Nigerian bodies and institutions, all of which are listed in CITA's fifth schedule.<sup>53</sup> Although a 2011 amendment to the fifth schedule expanded the list to include public institutions promoting human rights or social and economic development,<sup>54</sup> public institutions are defined as "institutions established by the government,"<sup>55</sup> and so independent food recovery organizations do not qualify as public institutions. Since

food recovery organizations in Nigeria are established by individuals and not the government, food recovery organizations such as Lagos Food Bank are not expressly listed in CITA's Fifth Schedule as entities eligible to receive tax deductible donations. In addition, while deductions are available for allowable donations made to eligible recipients, CITA does not explicitly authorize in-kind food donations. If in-kind donations were allowable, it is unclear how the value of such nonmonetary donations would be calculated.<sup>56</sup>

For most commercial transactions in Nigeria, the Value Added Tax Act requires vendors to incorporate value-added tax (VAT) at a rate of 7.5% on the value of all taxable goods and services.<sup>57</sup> Nigeria's VAT system also provides for two categories of taxable goods with different tax treatment: exempt or zero-rated. Both implicate the treatment of food products.<sup>58</sup> Exempt goods and services in Nigeria are listed under the first schedule and include basic food items and staples<sup>59</sup> such as vegetables, fruit, milk, and meat products.<sup>60</sup> In general, when food is VAT-exempt, the government does not tax the transfer of that food.<sup>61</sup> However, a food business cannot reclaim the input VAT it paid on business purchases along the value chain to produce it, placing a financial burden on food donors.<sup>62</sup>

The second category is zero-rated goods, which generally refers to goods that are typically taxable but have a tax rate of zero in certain instances.<sup>63</sup> Under the Value Added Tax Act, goods purchased for use in humanitarian, donor-funded projects are zero-rated.<sup>64</sup> Since food recovery organizations are mainly donor-funded and carry out activities in the public interest, food recovery and donation would presumably qualify as humanitarian, donor-funded projects, meaning that foodstuff purchased by food donors and food recovery organizations solely for purposes of donation to charity may likely qualify for zero-rating under the VAT scheme. In addition, a business or individual is entitled to claim a refund on any input VAT paid throughout the supply chain for zero-rated goods.<sup>65</sup> Nigeria's VAT tax scheme does not pose a barrier to food donation as basic food items are exempt and humanitarian, donor-funded projects are zero-rated.

## Recommended Policy Actions

### 1. AMEND THE COMPANIES INCOME TAX ACT (CITA) TO EXPLICITLY INCLUDE FOOD RECOVERY ORGANIZATIONS AS ELIGIBLE RECIPIENTS UNDER THE FIFTH SCHEDULE.

To claim a donation deduction, donors must give to eligible recipients, including any public fund established or approved by the federal or state government, as well as Nigerian bodies and institutions, all of which are listed in CITA's fifth schedule.<sup>66</sup> Food recovery organizations are currently not explicitly listed as eligible recipients under the fifth schedule. As such, Nigeria should amend CITA to explicitly include food recovery organizations as eligible recipients for purposes of claiming donation deductions.

### 2. AMEND THE COMPANIES INCOME TAX ACT (CITA) TO ALLOW IN-KIND DONATIONS, INCLUDING DONATIONS OF FOOD.

Nigeria should amend the CITA to explicitly authorize in-kind food donations under the Act. In addition, Nigeria should clarify how the value of in-kind donations would be calculated. Clarification would allow donors to claim the benefit and incentivize donations of more food.<sup>67</sup>

### 3. PROVIDE A TAX DEDUCTION FOR ACTIVITIES ASSOCIATED WITH THE STORAGE, TRANSPORTATION, AND DELIVERY OF DONATED FOOD.

In light of the potentially high costs associated with donating food, if the first recommendation is adopted, Nigeria should also amend CITA to offer a tax deduction for food donors for costs associated with the storage,

transportation, and delivery of food. This would increase the financial benefit companies receive when donating food and dissuade food waste. For example, the national tax scheme in France provides tax credits for costs associated with the transportation and storage of the donated items.<sup>68</sup>

## Government Grants and Incentives

### Issue Overview

Government-funded grants and incentive programs can incentivize food donation initiatives. Government grants can help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. Government funding can also support new technological innovations to make food donation more efficient and sustainable. Further, government recognition programs can function as a significant incentive for food donors, recognizing that positive public relations may play a significant role in consumer behavior. At the time of this writing, Nigeria does not offer national, state, or local government grants for food donation.

### Recommended Policy Actions

#### **1. CREATE GOVERNMENT GRANT OPPORTUNITIES FOR FOOD DONATION INFRASTRUCTURE.**

Grants and incentive programs funded at the federal or state level offer an important resource for food donation initiatives, as cost is one of the main barriers preventing food businesses from donating food. For example, in the United States, transportation and storage costs are often cited as the main expenses that manufacturers, retailers, and restaurants need to overcome to donate food.<sup>69</sup> Nigeria could look to other countries that have established similar structures. It should establish government grant opportunities for food donation infrastructure to help food donors and food recovery organizations acquire space and resources for harvesting, storing, processing, and transporting food. The grants should be broad enough to allow food recovery organizations to purchase or lease transportation vehicles (e.g., refrigerated trucks) and storage facilities (e.g., warehouses and processing facilities), to pay staff and volunteers, and to fund other such activities that reasonably assist the organization in providing apparently wholesome food to food-insecure individuals.

## CONCLUSION

While these Policy Recommendations are intended to help strengthen food donation in Nigeria, they are not exhaustive. Those committed to reducing FLW and promoting food recovery should seek the advice of legal experts, policymakers, and other stakeholders to identify the most effective and feasible policy interventions.

# ENDNOTES

- <sup>1</sup> FOOD & AGRIC. ORG. OF THE UNITED NATIONS, THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD (2021) 146, <https://www.fao.org/3/cb4474en/cb4474en.pdf> (https://perma.cc/J3GW-SVKR).
- <sup>2</sup> *Nigeria Food Smart Country Diagnostic*, THE WORLD BANK 7, 9 (2020), <https://openknowledge.worldbank.org/handle/10986/34522> (https://perma.cc/RMF6-Y3LZ).
- <sup>3</sup> GDP (current US\$)- Nigeria, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=NG> (https://perma.cc/D7TA-RRDX).
- <sup>4</sup> Poverty & Equity Brief, Nigeria, THE WORLD BANK (2021), [https://databank.worldbank.org/data/download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/AM2021/Global\\_POVEQ\\_NGA.pdf](https://databank.worldbank.org/data/download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/AM2021/Global_POVEQ_NGA.pdf) (https://perma.cc/JH7E-AWYK).
- <sup>5</sup> FOOD & AGRIC. ORG. OF THE UNITED NATIONS, THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD (2021) 146, <https://www.fao.org/3/cb4474en/cb4474en.pdf> (https://perma.cc/J3GW-SVKR).
- <sup>6</sup> CONSTITUTION OF NIGERIA (1999), § 16(2)(d).
- <sup>7</sup> MINISTRY OF BUDGET AND NATIONAL PLANNING, NATIONAL PLAN OF ACTION ON FOOD AND NUTRITION IN NIGERIA (2016), [HTTP://EXTWPRLEGS1.FAO.ORG/DOCS/PDF/NIG184608.PDF](http://extwprlegs1.fao.org/docs/pdf/nig184608.pdf).
- <sup>8</sup> *Nigeria launches plan to end hunger by 2030*, INTERNATIONAL INSTITUTE OF TROPICAL AGRICULTURE, (Jan. 9, 2017), <https://www.iita.org/wp-content/uploads/2017/01/The-ILTA-Bulletin-09-13-January-2017-No.-2361.pdf>; FEDERAL MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT, AGRICULTURE SECTOR FOOD SECURITY AND NUTRITION STRATEGY 2016-2025, vi (2017), <http://extwprlegs1.fao.org/docs/pdf/nig201549.pdf> (https://perma.cc/P9LY-AZWJ).
- <sup>9</sup> *Id.* at x (2017); UNITED NATIONS ENVIRONMENT PROGRAMME, FOOD WASTE INDEX REPORT (2021) 61, <https://www.unep.org/resources/report/unep-food-waste-index-report-2021> (https://perma.cc/AB8A-3MCA).
- <sup>10</sup> *Id.* at 61; *Nigerians Waste 40% of Agriculture Produce - Audu Ogbeh*, THE HERALD (2017), <https://www.herald.ng/nigerians-waste-40-of-agriculture-produce-audu-ogbeh/> (https://perma.cc/4SM6-V9ZS).
- <sup>11</sup> See THE WORLD BANK, *supra* note 2 at 11.
- <sup>12</sup> FED. REPUBLIC OF NIGERIA, NATIONAL POLICY ON SOLID WASTE MANAGEMENT (2020) 16, <https://environreview.com.ng/wp-content/uploads/2021/05/NATIONAL-POLICY-ON-SOLID-WASTE-MGT1.pdf>.
- <sup>13</sup> *Id.* at 43.
- <sup>14</sup> See generally Working Paper, Global Alliance for Improved Nutrition, Creating Alliances and Fostering Innovations to Reduce Post-Harvest Loss of Nutritious Food (Aug 2020), <https://www.gainhealth.org/sites/default/files/publications/documents/gain-working-paper-series-9-creating-alliances-and-fostering-innovations-to-reduce-post-harvest-loss-of-nutritious-food.pdf> (https://perma.cc/4LCB-G7D4).
- <sup>15</sup> National Agency for Food and Drug Administration and Control Act (2004) Cap. (N.1 LFN 2004); see generally *Food*, NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL, <https://www.nafdac.gov.ng/food/> (https://perma.cc/Q53Z-98LF).
- <sup>16</sup> It is unclear whether the NGFHP document is an official “regulation,” given it falls under the Food Guidelines portion of NAFDAC’s website as opposed to the Food Regulations portion of the website. See *Food Regulations*, NAFDAC (last visited Nov. 13, 2021), <https://www.nafdac.gov.ng/food/food-regulations/> https://perma.cc/6S3Z-NP77.
- <sup>17</sup> Food and Drugs Act (1999) Cap. F. 32 LFN 2004 § 1(1).
- <sup>18</sup> See Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act (2004) Cap. C.34 LFN 2004) § 1.
- <sup>19</sup> See National Agency for Food and Drug Administration and Control Act, *supra* note 15 at § 30 (c).
- <sup>20</sup> Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (Jul. 26, 2019).
- <sup>21</sup> WRAP, DEFRA, & FSA, REDISTRIBUTION LABELLING GUIDE (May 2020), <https://wrap.org.uk/sites/default/files/2020-07/WRAP-surplus-foodredistribution-labelling-guide-May-2020.pdf>. (Discussing that avoidable food waste equates to £13 billion in value). It also important to note that foods expected to keep for more than three months but no longer than 18 months, such as canned goods and some frozen food, may have a “best before end” date label that has the same connotation as a “best before” date with the donation rules attributable to “best before” dated products still applying); See also WRAP, REDISTRIBUTION CHECKLIST: DATE LABELS, STORAGE ADVICE AND FREEZING FOR FOOD SAFETY (Apr. 2020), [https://wrap.org.uk/sites/default/files/2020-08/WRAP-Surplus\\_food\\_redistribution\\_labelling\\_checklist\\_0.pdf](https://wrap.org.uk/sites/default/files/2020-08/WRAP-Surplus_food_redistribution_labelling_checklist_0.pdf); See also WRAP, *Surplus food redistribution labelling guidance* (Apr. 21, 2020), <https://wrap.org.uk/resources/guide/surplus-food-redistribution-labelling-guidance>.
- <sup>22</sup> *Guidelines on Food Donation*, NATIONAL ENVIRONMENT AGENCY (Oct. 24, 2016), <https://www.nea.gov.sg/docs/default-source/our-services/guidelines-on-food-donation-.pdf>.
- <sup>23</sup> Pre-Packaged Food, Water and Ice Labelling Regulations (2019).
- <sup>24</sup> See National Agency for Food and Drug Administration and Control Act, *supra* note 15 at § 29.
- <sup>25</sup> See Pre-Packaged Food, Water and Ice Labelling Regulations, *supra* note 23 at



<sup>26</sup> *Id.* at § 1.

<sup>27</sup> *Id.* at at § 11.

<sup>28</sup> *Id.* at § 11 (2)-(3).

<sup>29</sup> *Id.* at § 11 (2).

<sup>30</sup> FOOD & AGRIC. ORG. OF THE U.N., WORLD HEALTH ORG., CODEX GENERAL STANDARD FOR THE LABELLING OF PRE-PACKAGED FOODS, CODEX STAN 1-1985 (Rev. 1-1991) 2.

<sup>31</sup> See Pre-Packaged Food, Water and Ice Labelling Regulations, *supra* note 23 at

<sup>32</sup> *Id.* at § 11 (9) (a)-(f).

<sup>33</sup> *Id.* at at § 2 (1)(b)(i).

<sup>34</sup> *Id.* at § 25.

<sup>35</sup> *Id.*

<sup>36</sup> FLPC, THE GLOBAL FOOD DONATION POLICY ATLAS UNITED KINGDOM LEGAL GUIDE: FOOD DONATION LAW AND POLICY 9 (2021), <https://www.foodbanking.org/wp-content/uploads/2021/04/UK-Legal-Guide-v2.pdf> [<https://perma.cc/M7K9-TU52>].

<sup>37</sup> WRAP, *Love Food Hate Waste*, <https://lovefoodhatewaste.com> [<https://perma.cc/PQN9-S2A4>].

<sup>38</sup> *Past May Date? Look, Smell, Taste, Don't Waste: Best Before Labels Are Causing Food Waste*, TOO GOOD TO GO INT'L (2020), <https://toogoodtogo.co.uk/en-gb/campaign/commitment> (last visited Oct. 25, 2021); Rebecca Smithers, *Cut food waste at home by sniffing and tasting, urges new campaign*, GUARDIAN (Jan. 23, 2021), <https://www.theguardian.com/environment/2021/jan/23/cut-food-waste-at-home-bysniffing-and-tasting-urges-new-campaign>.

<sup>39</sup> See Food Donation Law (Law No. 25989), Art. 5 for Argentina; 42 U.S.C. § 1791 for the United States.

<sup>40</sup> Federal Competition and Consumer Protection Act (2018) No. (1).

<sup>41</sup> *Id.* at § 131.

<sup>42</sup> *Id.* at § 136.

<sup>43</sup> *Id.* at § 167; *Id.* at § 136 (1), (4).

<sup>44</sup> *Id.* at § 167.

<sup>45</sup> *Id.* at § 167.

<sup>46</sup> *Id.* at § 136(3).

<sup>47</sup> *Id.* at §§ 145.

<sup>48</sup> *Id.* at §§ 136 (5), 129 (c) (i).

<sup>49</sup> *Id.* at §§ 145.

<sup>50</sup> Food Donation Law (Law No. 25989), Art. 2 - 3.

<sup>51</sup> Law 25989, Dec. 16, 2004 [30564] B.O. 1 [Argentina], <http://servicios.infoleg.gob.ar/infolegInternet/anexos/100000-104999/102664/texact.htm> [<https://perma.cc/ED5J-EE4H>] amended via the National Plan for Food Loss and Waste (Law No. 27454).

<sup>52</sup> Companies Income Tax Act (CITA), Cap C21, LFN 2004 (as amended)) (Nigeria).

<sup>53</sup> *Id.* at (Nigeria); *Id.* at (Nigeria), Fifth Schedule (Funds, Bodies and Institutions in Nigeria to which Donations may be made under Section 25 of this Act).

<sup>54</sup> See Amendment of the Fifth Schedule to the Companies Income Tax Act, Order No 1 of 2011 (Amendment) (Nigeria). Any public fund established or approved by the Government of the Federation or established by any of the State Governments in aid of or for the relief of drought or any other national disaster in any part of the Federation, A public institution established and maintained by a society or association for the promotion or defence of human rights, women empowerment and development or for re-orientation rehabilitation/welfare support service for orphans, widows, physically challenged, refugees and all the categories of persons that may require social or economic rehabilitation and transformation or for youth empowerment and development which is carried on other than for the purpose of profits or gains to the individual members of the society or association or person, A public institution established and maintained by a society or association for Leadership and Resource Development or for the Promotion of National Unity and Patriotism or for the Promotion of Social and Economic Development which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person, A public institution or public fund established and maintained by a society or association for accident prevention and control activities or for information system development and awareness which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person, A public institution established and maintained by a society or association for creation of awareness for transparency in governance and electoral processes or for the promotion of national unity and patriotism which is carried on other than for the purpose of profits or gains to the individual members of the society, association, or person, Any public institution or public fund established and maintained by a society or association for museum development and promotion of sports, arts and culture which is carried on otherwise than for the purpose of profits or gains to the individual members of the society, association or person, Any public institution or public fund established and maintained by a society or association for rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development which is carried on other than for the purpose of profits or gains to the individual members of the society, association, or person, and Any professional body established under an Act of the National Assembly for

the regulation and practice of the profession.)

- <sup>55</sup> S.I. 40 Requirements for Funds, Bodies or Institutions (Under the 5<sup>th</sup> Schedule to the Companies Income Tax Act) Regulations 2011, <https://gazettes.africa/archive/ng/2011/ng-government-gazette-dated-2011-12-16-no-116.pdf> (<https://perma.cc/9A7G-BK4R>) (“Public Funds, Bodies or Institutions” means a Fund established by government or its Agencies for the purpose of advancing the interests and welfare of the people”); Amendment of the Fifth Schedule to the Companies Income Tax Act, Order No 1 of 2011 (Amendment) (Nigeria), <https://pwc-nigeria.typepad.com/files/cit-amendment---5th-schedule.pdf> (<https://perma.cc/PE5L-ENVR>).
- <sup>56</sup> Michael Ango & Yetunde Filani, *Tax Deductibility of Donations by Corporate Entities and Individuals to Combat COVID-19*, ANDERSON TAX DIGEST (2020), <https://ng.andersen.com/tax-deductibility-of-donations-by-corporate-entities-and-individuals-to-combat-covid-19/> [<https://perma.cc/3Y6Q-FXWC>] (Another issue with COVID-19 tax deductibility is the treatment of donations made in kind. Would the monetary value of donations in kind such as... food items be computed and deducted to the maximum of 10% of the donor company’s total profits (where the donor is under the CITA regime)?).
- <sup>57</sup> Value Added Tax Act, No. 53 (1993) (Nigeria); FEDERAL INLAND REVENUE SERVICE, INFORMATION CIRCULAR NO: 2020/02, [https://pwc-nigeria.typepad.com/files/firs-vat-information-circular\\_may2020.pdf](https://pwc-nigeria.typepad.com/files/firs-vat-information-circular_may2020.pdf) (<https://perma.cc/5QE5-Z4UL>).
- <sup>58</sup> Value Added Tax (“VAT”) Act (Modification Order), 2020 (“the Order”), <https://pwc-nigeria.typepad.com/files/vat-modification-order-2020-detailed-list-vat-exempts.pdf> [<https://perma.cc/EAS7-VWAD>]; Value Added Tax Act, First Schedule, (1993) (Nigeria); HARV. L. SCH. FOOD. L. POL’Y CLINIC, PROMOTING FOOD DONATION: TAX LAW AND POLICY 6, [https://www.foodbanking.org/wp-content/uploads/2021/10/2021\\_Atlas\\_Tax\\_Brief.pdf](https://www.foodbanking.org/wp-content/uploads/2021/10/2021_Atlas_Tax_Brief.pdf) [<https://perma.cc/REJ8-NA2W>].
- <sup>59</sup> See Value Added Tax Act, *supra* note 56 at First Schedule; *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “What are exempted goods under Value Added Tax (VAT) Act?”
- <sup>60</sup> See Value Added Tax (“VAT”) Act (Modification Order), *supra* note 57. (additives (honey, whether raw or semiprocessed); white and brown bread; raw or semiprocessed cereals (maize, rice, wheat, millet, barley, sorghum, oat, fonino, etc.); natural and table water; fresh, dried, or ground vegetables (pepper, melons, lettuce, okro, cabbage, carrots, and “others of the same kind”); salt; raw, flaked, or floured roots (yam, cocoyam, water-yam, cassava, sweet potatoes, Irish potatoes, and “others of the same kind”), cooking oils (vegetable, soya, palm, groundnut, shea, beniseed, olive, coconut, and others “suitable for culinary purposes”); milk (fresh, liquid, and powdered); fresh or dried fruits; meat and poultry; culinary herbs; fish; flour and starch; pulses (beans, lentils, chickpeas, tamarind, and “others of the same kind”); and nuts).
- <sup>61</sup> See HARV. L. SCH. FOOD. L. POL’Y CLINIC, *supra* note 58 at 6.
- <sup>62</sup> See Value Added Tax Act, *supra* note 56 at (Nigeria); *Id.* at 6; *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “What is input VAT?”
- <sup>63</sup> See Value Added Tax (“VAT”) Act (Modification Order), *supra* note 57; See Value Added Tax Act, *supra* note 56 at First Schedule; *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “What is Zero-rated VAT?”
- <sup>64</sup> FEDERAL INLAND REVENUE SERVICE, GUIDELINES ON THE TAX TREATMENT OF NON-GOVERNMENTAL ORGANIZATIONS (NGOs), INFORMATION CIRCULAR NO. 2021/01, <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/firs-circular-on-taxation-of-ngos.pdf> (<https://perma.cc/2LKW-SJHK>); *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “Which transactions are zero-rated?”
- <sup>65</sup> See Value Added Tax Act, *supra* note 56 at § 17; *FIRS Tax Refund Process Steps*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/tax-refund/> (<https://perma.cc/96XT-P7Y5>).
- <sup>66</sup> See Companies Income Tax Act (CITA), *supra* note 52 , , Fifth Schedule (Funds, Bodies and Institutions in Nigeria to which Donations may be made under Section 25 of this Act).
- <sup>67</sup> See HARV. L. SCH. FOOD. L. POL’Y CLINIC, *supra* note 58 at 9.
- <sup>68</sup> DRAAF RHÔNE-ALPES, DONNER AUX ASSOCIATIONS D’AIDE ALIMENTAIRE GUIDE PRATIQUE ET RÉGLEMENTAIRE (2015), <http://draaf.auvergne-rhonealpes.agriculture.gouv.fr/IMG/pdf/Guidedonsalimentaires-20-septembre-1cle0124ef.pdf>.
- <sup>69</sup> FOOD WASTE REDUCTION ALL., ANALYSIS OF U.S. FOOD WASTE AMONG FOOD MANUFACTURERS, RETAILERS, AND RESTAURANTS 17 (2016), [http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report\\_Final.pdf](http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report_Final.pdf).

© SEPTEMBER 2022



THE GLOBAL  
FOOD DONATION  
POLICY ATLAS

